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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Angola, Argentina, Armenia, Austria, Belgium, Benin, Bulgaria, Canada, Cape Verde, Chile, Costa Rica, Côte d'Ivoire, Cyprus, Czech Republic, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Germany, Greece, Guatemala, Honduras, Hungary, Indonesia, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Mexico, Monaco, Morocco, Netherlands, Norway, Panama, Paraguay, Peru, Poland, Portugal, Romania, Russian Federation, Senegal, Slovenia, Spain, Sweden, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland and Uruguay: revised draft resolution

Protection of human rights and fundamental freedoms while countering terrorism

The General Assembly,

Reaffirming the purposes and principles of the Charter of the United Nations,

Reaffirming also the fundamental importance, including in response to terrorism and the fear of terrorism, of respecting all human rights and fundamental freedoms and the rule of law,

Reaffirming further that States are under the obligation to protect all human rights and fundamental freedoms of all persons,

Reiterating the important contribution of measures taken at all levels against terrorism, consistent with international law, in particular international human rights law and refugee and humanitarian law, to the functioning of democratic institutions and the maintenance of peace and security and thereby to the full enjoyment of human rights, as well as the need to continue this fight, including through international cooperation and the strengthening of the role of the United Nations in this respect,

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Deeply deploring the occurrence of violations of human rights and fundamental freedoms in the context of the fight against terrorism, as well as violations of international refugee law and international humanitarian law,

Recognizing that the respect for all human rights, the respect for democracy and the respect for the rule of law are interrelated and mutually reinforcing,

Noting with concern measures that can undermine human rights and the rule of law, such as the detention of persons suspected of acts of terrorism in the absence of a legal basis for detention and due process guarantees, the deprivation of liberty that amounts to placing a detained person outside of the protection of the law, the trial of suspects without fundamental judicial guarantees, the illegal deprivation of liberty and transfer of individuals suspected of terrorist activities, and the return of suspects to countries without individual assessment of the risk of there being substantial grounds for believing that they would be in danger of subjection to torture, and limitations to effective scrutiny of counter-terrorism measures,

Stressing that measures used in the fight against terrorism, including profiling of individuals and the use of diplomatic assurances, memorandums of understanding and other transfer agreements or arrangements, must be in compliance with States' obligations under international law, including international human rights law, international refugee law and international humanitarian law,

Reaffirming that acts, methods and practices of terrorism in all its forms and manifestations are activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening territorial integrity and security of States and destabilizing legitimately constituted Governments, and that the international community should take the necessary steps to enhance cooperation to prevent and combat terrorism,[1]

Reaffirming its unequivocal condemnation of all acts, methods and practices of terrorism in all its forms and manifestations, wherever and by whomsoever committed, regardless of their motivation, as criminal and unjustifiable, and renewing its commitment to strengthen international cooperation to prevent and combat terrorism,

Reaffirming that terrorism cannot and should not be associated with any religion, nationality, civilization or ethnic group,

Noting the declarations, statements and recommendations of a number of human rights treaty monitoring bodies and special procedures on the question of the compatibility of counter-terrorism measures with human rights obligations,

Acknowledging the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance by the General Assembly in its resolution 61/177 of 20 December 2006 and recognizing that its entry into force, expected before the sixty-third session of the Assembly, will be a significant event,

Emphasizing the importance of properly interpreting and implementing the obligations of States with respect to torture and other cruel, inhuman or degrading treatment or punishment, and of abiding strictly by the definition of torture in

[1] See sect. I, para. 17, of the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993 (A/CONF.157/24 (Part I), chap. III).

article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[2] in the fight against terrorism,

Recalling its resolutions 57/219, 58/187, 59/191, 60/158 and 61/171, Commission on Human Rights resolutions 2003/68,[3] 2004/87[4] and 2005/80[5] and other relevant resolutions of the General Assembly, the Commission on Human Rights and the Human Rights Council, including its decision 2/112,[6]

Recalling also the establishment by the Commission on Human Rights in its resolution 2005/80 of the mandate of the Special Rapporteur of the Human Rights Council on the promotion and protection of human rights and fundamental freedoms while countering terrorism,

Recalling further its resolution 48/141 of 20 December 1993 and, inter alia, the responsibility of the United Nations High Commissioner for Human Rights to promote and protect the effective enjoyment of all human rights,

Acknowledging the work of the Human Rights Council in promoting respect for the protection of human rights and fundamental freedoms in the fight against terrorism,

Bearing in mind the special procedures review process being undertaken by the Human Rights Council,

Recognizing the importance of the United Nations Global Counter-Terrorism Strategy, adopted on 8 September 2006,[7] and reaffirming its relevant clauses on the measures to ensure respect for human rights for all, international humanitarian law and the rule of law as the fundamental basis for the fight against terrorism,

1. *Reaffirms* that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law;

2. *Deplores* the suffering caused by terrorism to the victims and their families, expresses its profound solidarity with them, and stresses the need to consider providing them with assistance on a voluntary basis;

3. *Reaffirms* the obligation of States, in accordance with article 4 of the International Covenant on Civil and Political Rights,[8] to respect certain rights as non-derogable in any circumstances, recalls, in regard to all other Covenant rights, that any measures derogating from the provisions of the Covenant must be in accordance with that article in all cases, and underlines the exceptional and temporary nature of any such derogations;[9]

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[2] United Nations, *Treaty Series*, vol. 1465, No. 24841.

[3] See *Official Records of the Economic and Social Council, 2003, Supplement No. 3* (E/2003/23), chap. II, sect. A.

[4] Ibid., *2004, Supplement No. 3* (E/2004/23), chap. II, sect. A.

[5] Ibid., *2005, Supplement No. 3* and corrigendum (E/2005/23 and Corr.1), chap. II, sect. A.

[6] See *Official Records of the General Assembly, Sixty-second Session, Supplement No. 53* (A/62/53), chap. I, sect. B.

[7] Resolution 60/288.

[8] See resolution 2200 (XXI), annex.

[9] See, for example, General Comment No. 29 on states of emergency adopted by the Human Rights Committee on 24 July 2001.

4. *Calls upon* States to raise awareness about the importance of these obligations among national authorities involved in combating terrorism;

5. *Reaffirms* that counter-terrorism measures should be implemented in full consideration of human rights of persons belonging to minorities and must not be discriminatory on grounds such as race, colour, sex, language, religion or social origin;

6. *Urges* States to fully respect non-refoulement obligations under international refugee and human rights law and, at the same time, to review, with full respect for these obligations and other legal safeguards, the validity of a refugee status decision in an individual case if credible and relevant evidence comes to light that indicates that the person in question has committed any criminal acts, including terrorist acts, falling under the exclusion clauses under international refugee law;

7. *Calls upon* States to refrain from returning persons, including in cases related to terrorism, to their countries of origin or to a third State whenever such transfer would be contrary to their obligations under international law, in particular human rights law, international humanitarian law and international refugee law, including in cases where there are substantial grounds for believing that they would be in danger of subjection to torture, or where their life or freedom would be threatened in violation of international refugee law on account of their race, religion, nationality, membership of a particular social group or political opinion, bearing in mind obligations that States may have to prosecute individuals not so returned;

8. *Also calls upon* States to ensure that guidelines and practices in all border control operations and other pre-entry mechanisms are clear and fully respect their obligations under international law, particularly refugee law and human rights law, towards persons seeking international protection;

9. *Urges* States, while countering terrorism, to ensure due process guarantees, consistent with all relevant provisions of the Universal Declaration of Human Rights,[10] of the International Covenant on Civil and Political Rights and of the Geneva Conventions,[11] in their respective fields of applicability;

10. *Opposes* any form of deprivation of liberty that amounts to placing a detained person outside of the protection of the law and urges States to respect the safeguards concerning the liberty, security, and dignity of the person and to treat all prisoners in all places of detention in accordance with international law, including human rights law and international humanitarian law;

11. *Reaffirms* that it is imperative that all States work to uphold and protect the dignity of individuals and their fundamental freedoms, as well as democratic practices and the rule of law, while countering terrorism;

12. *Encourages* States, while countering terrorism, to take into account relevant United Nations resolutions and decisions on human rights, and encourages them to give due consideration to the recommendations of the special procedures and mechanisms of the Human Rights Council and the relevant comments and views of United Nations human rights treaty bodies;

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[10] Resolution 217 A (III).

[11] United Nations, *Treaty Series*, vol. 75, Nos. 970-973.

13. *Takes note with appreciation* of the report of the Secretary-General[12] and of the report of the Special Rapporteur of the Human Rights Council on the promotion and protection of human rights and fundamental freedoms while countering terrorism[13] submitted pursuant to General Assembly resolution 61/171 and takes note of the recommendations and conclusions contained therein;

14. *Welcomes* the ongoing dialogue established in the context of the fight against terrorism between the Security Council and its Counter-Terrorism Committee and the relevant bodies for the promotion and protection of human rights, and encourages the Security Council and its Counter-Terrorism Committee to strengthen the links and to continue to develop cooperation with relevant human rights bodies, in particular with the Office of the United Nations High Commissioner for Human Rights, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and other relevant special procedures and mechanisms of the Human Rights Council, giving due regard to the promotion and protection of human rights in the ongoing work pursuant to relevant Security Council resolutions relating to terrorism;

15. *Calls upon* States and other relevant actors, as appropriate, to continue to implement the United Nations Global Counter-Terrorism Strategy, which, inter alia, reaffirms respect for human rights for all and the rule of law to be the fundamental basis of the fight against terrorism;

16. *Requests* the Office of the United Nations High Commissioner for Human Rights and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism to continue to contribute to the work of the Counter-Terrorism Implementation Task Force, including by raising awareness about the necessity to respect human rights while countering terrorism;

17. *Acknowledges with appreciation* the cooperation between the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and all relevant procedures and mechanisms of the Human Rights Council as well as the United Nations human rights treaty bodies, and urges them to continue their cooperation, in accordance with their mandates, and to coordinate their efforts, where appropriate, in order to promote a consistent approach on this subject;

18. *Requests* all Governments to cooperate fully with the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in the performance of the tasks and duties mandated, including by reacting promptly to the urgent appeals of the Special Rapporteur and providing the information requested, as well as to cooperate with other relevant procedures and mechanisms of the Human Rights Council dealing with the promotion and protection of human rights and fundamental freedoms while countering terrorism;

19. *Calls upon* States to give serious consideration to responding favourably to requests by the Special Rapporteur to visit their countries;

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[12] A/62/298.

[13] A/62/263.

20. *Welcomes* the work by the United Nations High Commissioner for Human Rights to implement the mandate given to her in resolution 60/158 in 2005 and requests the High Commissioner to continue her efforts in this regard,

21. *Requests* the Secretary-General to submit a report on the implementation of the present resolution to the Human Rights Council and to the General Assembly at its sixty-third session;

22. *Decides* to consider at its sixty-third session the report of the Special Rapporteur of the Human Rights Council on the promotion and protection of human rights and fundamental freedoms while countering terrorism.